

APPLICANTS:
Robert & Diane Jones

REQUEST:
**A variance to locate a garage within the
required 50 foot front yard setback in
the Agricultural District**

HEARING DATE: June 27, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5599

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Robert Wayne Jones

CO-APPLICANT: Diane C. Jones

LOCATION: 200 Terrace View Court – Churchville Meadows, Churchville
Tax Map: 42 / Grid: 2E / Parcel: 504 / Lot: 19
Third (3rd) Election District

ZONING: AG / Agricultural

REQUEST: A variance pursuant to Section 267-34(C) Table II of the Harford County Code to permit a garage to within the required 50 foot front yard setback (29 foot setback proposed) in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

Robert Jones, Co-Applicant, described his property as a 2.2 acre parcel located in the Churchville Meadows subdivision. The parcel is improved by a single family, two-story home, constructed in 2004, and an attached three car garage. The home contains four bedrooms. The parcel is improved by no other structures.

The Applicant testified that he presently has three family cars, plus two motorcycles, a company car which he parks on the property, and various pieces of lawn equipment. One of the Applicants' sons will soon obtain his drivers license and will be driving. The Applicants are as a result forced to park some of these vehicles on the street in front of the home. The Applicants find this to be unsightly and undesirable. Street parking is also restricted as the existing paved roadbed of Terrace View Court is relatively narrow. Therefore, they wish to construct a 24 foot by 26 foot freestanding garage, somewhat to the rear of their home, and approximately 29 feet from the right-of-way of Terrace View Court. Attachment 4 to the Staff Report is the site plan of the property which shows the proposed location of the garage.

Case No. 5599 – Robert & Diane Jones

Unfortunately, and despite the relative abundance of unencumbered lot space available to the Applicants, they feel that the proposed location is the only viable one. A variance to the required 50 foot side yard requirement is necessary to construct a garage in the proposed location.

Mr. Jones advances a number of arguments for the requested variance of approximately 21 feet to the required 50 foot required setback:

- * His house was built at the most narrow part of the lot. To support this argument he relies upon aerial photographs in the file as well as the site plan marked as Attachment 4. The site plan demonstrates that the house is built at a location on the lot where the lot width is approximately 185 feet, while the rear of the lot expands to at least 267 feet. The house is also built almost immediately upon the required 50 foot front yard setback off Meadow View Court, while the total lot itself has a depth of almost 450 feet. Accordingly, the house could have been built much
- * The garage cannot be built to the west side of the house as, again, the house is built directly upon the required 40 foot side yard setback in that location.
- * The septic system and septic reserve area are located directly behind the house, on the Terrace View Court side, which would preclude the location of a freestanding garage in that location.
- * The subject property is a corner lot and is accordingly impacted by two 50 foot deep front yard setbacks.
- * The proposed location of the garage minimizes the amount of paving necessary as the existing driveway can be utilized to access a new building. The garage itself will face Meadow View Court, on which the house fronts.

Mr. Jones adds that while the requested setback is 21 feet, in fact, the distance between the paved portion of Terrace View Court and the garage will be 40 feet, given that the travel portion of Terrace View Court is located significantly off the right-of-way line.

The witness stated that his lot is generally flat, and the topography of Terrace View and Meadow View Courts is flat. Accordingly, no sight distance problems exist for people using the garage or for neighbors using the streets. Mr. Jones feels that the proposed location of the garage is in the most obvious and practical spot, and will cause no adverse harm to the neighbors or neighborhood.

The Applicants have identified six lots in their subdivision which also have two front yard setbacks. The Applicants house is the only house which is sited on its lot so as to front on the narrower part of the lot. All other homes which have two front yards are situated so as to front on the longer side of the lot. If the Applicants home were so situated, that is, fronting on Terrace View Court instead of Meadow View Court, the requested variance would not be necessary and the garage could be built as a matter of right.

Case No. 5599 – Robert & Diane Jones

The Applicant also identified five other homes in the neighborhood which have garages similar to that proposed by the Applicants. The proposed garage will be constructed with materials and colors similar to that of the existing home. The Homeowners Association of the Applicants' neighborhood has granted its approval. All of the neighbors have been consulted by the Applicants and none have any objections.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune and the Department believe the septic line which lies between the home and the septic tank and septic reserve area to the rear of the Applicants' home can be moved so as to allow the garage to be located outside of the 50 foot front yard setback. The variance is accordingly not justified. The garage could also be located on the west side, to within 10 feet of the setback line. Accordingly, the garage could be built on the home opposite that proposed by the Applicants.

Mr. McClune and the Department believe that the Applicants' property does not exhibit any unique circumstance, and the variance requested is a significant one. The Applicants have not shown sufficient hardship or inability to construct the garage without the variance and the Department does not recommend approval.

The Co-Applicant, Mr. Jones, then stated that he and his wife do not wish to add the additional driveway and paving that would be necessary if the garage were either put behind the house or on the opposite side of the house. He believes that a garage in either of those locations, together with the additional required driveway, would be an eye sore to the neighborhood and would not be as aesthetically pleasing as proposed.

There was no other testimony or evidence given in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

"Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

Case No. 5599 – Robert & Diane Jones

- B. *In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicants reside in an attractive, newly built home on a virtually flat 2.28 acre parcel in a subdivision of single family homes and similar parcels. The parcel itself, similar to other parcels in the neighborhood, is completely devoid of vegetation, at least according to the aerial photographs. The homes are obviously newly built, and are fairly large. No doubt due to the relatively large size of the lots, many of the lots are corner lots with two front yard setbacks. The Applicants' parcel is one of at least five corner lots. Unfortunately for the Applicants, however, the builder of his home elected to face the Applicants' home on the narrow lot frontage, rather than the wide lot frontage. The narrow frontage is on Meadow View Court and, given the width and size of the house, the house is built almost directly upon the Meadow View Court 50 foot front yard setback, the west side yard setback of 40 feet, and on the second front yard setback on Terrace View Court of 50 feet. In fact, it is so close to the setbacks as to preclude any sort of new construction at any of these sides although, as Mr. McClune noted in his testimony, a freestanding building could be constructed within 10 feet of the side yard lot line.

The siting of the house is unusual because approximately 70% of the lot is located to the rear of the house, and is unimproved open space. By constructing the home as it did, the builder severely limited any future homeowner's ability to expand the house by an addition of an improvement or other structure as proposed by the Applicants. If the builder had, furthermore, simply elected to construct the home on Terrace View Court instead of Meadow View Court, the side yard setback variances would not have such a severe impact and improvements could have been erected to the north or right side of the house as one were viewing it from Terrace View Court.

Case No. 5599 – Robert & Diane Jones

The Applicants have a three-car garage, but have the need for additional storage space. The Applicant states that neither Terrace View Court or Meadow View Court is appropriate for on-street parking. In any event the Applicants feel that parking on these streets is not beneficial to the neighborhood or aesthetically pleasing. The Applicants' desire to build a garage similar in appearance and design to their attractive single family home. The only good location for that garage, in the Applicants' opinion, is as proposed which is about 29 feet from the right-of-way at Terrace View Court, and accordingly 21 feet within that front yard setback. The Applicants note that the garage will, actually, be located about 40 feet from the travel portion of Terrace View Court.

The Applicants make a convincing showing that while it would not be impossible to locate such a garage within an area that is now encumbered by a septic tank and septic lines, or on the other side of the home within the existing 40 foot side yard setback, such a design is not the most desirable, and is not without some difficulty and additional expense.

There is no question that the Applicants' property is unique. It is a corner lot, encumbered by two front yard setback requirements. While other lots within the neighborhood are also similarly impacted, clearly such a situation is not normal in most subdivisions and the owners of corner lots, that is, those with two front yard setback requirements, are impacted more than most lot owners. The question is, of course, whether or not this unusual circumstance causes an application of the Code which would create a difficulty or unusual hardship on the Applicants.

While perhaps not the most compelling case, clearly if the Applicants' property were not so encumbered by the two front yard setbacks the Applicants would be able to construct the garage as proposed. No other factor contributes to the difficulty of the Applicants in constructing a garage as proposed except for this lot anomaly.

The Department of Planning and Zoning's position is noted. The Department is of the opinion that the septic lines to the rear of the house could be relocated so as to allow the garage to be constructed in that location, or the garage could be located in the 40 foot side yard on the opposite side of the house. However, the Applicant testified convincingly that the proposed location is the most practical, and the construction of the garage in either location proposed by the Department would present the Applicants' with an unnecessary hardship. The Applicant further states that the garage within the 40 foot side yard setback to the west side of the house would unnecessarily and detrimentally impact the neighbor on that side of the home.

It is accordingly found that the Applicants suffer from a unique condition which causes the Applicants practical difficulty. That practical difficulty is their inability to construct a garage similar in appearance and location to many within Harford County and within the neighborhood. The relief requested is the minimum necessary to alleviate the hardship. There is no finding of adverse impact as a result of the variance.

Case No. 5599 – Robert & Diane Jones

CONCLUSION:

It is accordingly recommended that the requested variance be granted, subject to the following:

1. That the Applicants obtain all necessary permits and inspections.
2. That the garage be constructed with materials, and in appearance and design, similar to that of the principal home on the property.

Date: August 1, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on AUGUST 29, 2007.